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EX PARTE OR LATE FILED

April 11, 1996

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**VIA HAND-DELIVERY**

APR 11 1996

Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Re: WT Docket No. 94-148, In Re Reorganization and  
Revision of Parts 1, 2, 21, and 94 of the Rules to  
Establish a New Part 101 Governing Terrestrial  
Microwave Fixed Radio Services

**WRITTEN EX PARTE PRESENTATION**

Dear Sir/Madam:

This is to notify the Office of the Secretary that today the law firm of McDermott, Will and Emery submitted a written ex parte presentation to Robert James of the Private Wireless Division. In accordance with Section 1.1206 of the Commission's rules, we are enclosing two copies of the ex parte presentation for inclusion in the record of the above-captioned proceeding.

Very truly yours,

Shirley S. Fujimoto /BJO

Shirley S. Fujimoto

Enclosures

cc: Robert James, Private Wireless Division,  
Wireless Telecommunications Bureau

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McDermott, Will & Emery  
Washington, D.C.

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APR 11 1996

MEMORANDUM

TO: Robert James DATE: April 11, 1996

FROM: Shirley S. Fujimoto  
Barry J. Ohlson  
Charles F. Turner

RE: WT Docket No. 94-148; In Re Reorganization and Revision  
of Parts 1, 2, 21, and 94 of the Rules to Establish a  
New Part 101 Governing Terrestrial Microwave Fixed  
Radio Services

WRITTEN EX PARTE PRESENTATION

The purpose of this memorandum is to confirm the applicability of the new "in operation" rule set forth in the text of the Report and Order in the above-captioned proceeding. We hope that the Commission may be able to incorporate the clarification identified in this memorandum into the text of the Federal Register version of the Report and Order, or in a subsequent erratum. If however, this clarification cannot be incorporated into either document, we ask that you please notify us immediately so that we can file a formal Petition for Clarification with the Commission.

Discussion

As noted above, our request for clarification stems from the Commission's discussion of "in operation" set forth in ¶¶ 34-36 of the Part 101 Report and Order and the associated operational rules of Section 101.63. Preliminarily, we understand that the Commission will be amending this rule section to make it consistent with the discussion in the Report and Order. One possible change to the rules would involve replacing the language currently in Section 101.63(b) with the discussion set forth in the Report and Order: "a station authorized under this [section will be considered] in operation when construction is completed and the station is capable of providing service."

In light of this upcoming rule change, we wanted to confirm the impact of revised Section 101.63(b) on licensees (in

Robert James  
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particular multiple address systems (MAS) licensees) authorized for systems prior to the August 1, 1996 effective date of the rules, but with construction dates that fall beyond that date. For example, one of our clients is licensed for an MAS system that was issued by the Commission on November 15, 1995. Under the Commission's existing construction and operational rules, our client, a private MAS carrier, is obligated to have a customer on its MAS system and to carry customer traffic prior to the expiration of the one-year construction period on November 15, 1996. We believe that with the "in operation" rule change set forth in the Part 101 Report and Order, our client would no longer be required to carry customer traffic in order to meet the FCC's construction requirement even though the license was issued prior to the August 1, 1996 date.

Consequently, by this memorandum, we now request that the Commission clarify in either the Federal Register or in an erratum that the new Part 101 construction rules will apply to all licensees, including those with facilities licensed prior to the August 1, 1996 date. Specifically, the Commission should explain that after enactment of the Part 101 rules, licensees still within their one-year construction period will be subject to the new construction and operation standard -- completing construction of an MAS facility that is capable of providing service -- not the construction and operation requirements currently in place.

\* \* \* \* \*

Thank you for your assistance with this matter. As noted above, we request that the Commission address this clarification in an upcoming erratum or in the Federal Register. In the event you are unable to honor this request, we ask that you please contact Barry Ohlson at 202-778-8290.